

## **§43 SPECIAL PERMIT AND /OR SITE PLAN REVIEW PROCEDURES** *REVISED 07-18-11*

### **43-1 Purpose**

The purpose of this process is to review the development plans of an applicant to assure that they meet the stated objectives and standards, provide for necessary public facilities or services, preserve topographic features, protect historical and archeological factors and protect adjacent properties, through appropriate design considerations and siting of buildings, structures, uses, access, parking, landscaping and other site development features.

### **43-2 Authorization**

#### **43-2.1 Special Permit**

In all cases where these regulations require approval of a Special Permit, no zoning permit shall be issued by the Zoning Enforcement Officer except after a public hearing and upon authorization of the Planning and Zoning Commission.

#### **43-2.2 Site Plans**

In all cases where these regulations require approval of a Site Plan, no zoning permit shall be issued by the Zoning Enforcement Officer except after Site Plan Review by and authorization of the Planning and Zoning Commission.

### **43-3 Application**

Applications for a Special Permit and/or Site Plan Review shall be in a form prescribed by the Commission and shall be considered in accordance with the procedures adopted by the Commission, as amended from time to time.

#### **43-3.1 Required Documents**

Before the commission shall consider any such application, all the required documents set forth in §44-1 shall be submitted by the applicant.

#### **43-3.2 Required Dates**

The applicant shall submit any required report or document set forth in §44-2 at least fourteen (14) calendar days prior to the public hearing or Commission review of an application. If any such report or document has not been submitted, the Commission may deny the application.

#### **43-3.3 Application Forms**

Application for approval of a special permit or site plan shall be made to the commission in writing on Westport Planning and Zoning forms. The application shall be signed by the applicant, and if the project is proposed by an applicant other than the owner of the property, the application shall be signed by the owner. If the applicant is unable to obtain the signature of the property owner the applicant may submit a letter of authorization signed by the property owner.

### **43-4 Completeness, Date of Submission and Date of Receipt**

An application shall be deemed to be complete if it is in proper form and is accompanied by all the application material required by §44-1. The Planning Staff shall note on the application the

date that these requirements have been met and that date shall be the date of submission to the commission.

The date of receipt of a formal application shall be the date of the next regularly scheduled meeting of the Commission immediately following the date of submission to the Commission of a complete application, or thirty-five (35) days after such submission, whichever is sooner.

#### **43-5 Public Hearing**

##### **43-5.1 Special Permit Hearings**

The Commission shall hold a public hearing on an application for a Special Permit. If the grant of such an application is dependent on the Commission's approval of a Site Plan, the applicant shall submit an application for Site Plan review at the same time as he submits his application for a Special Permit and both applications shall be considered at the same public hearing.

##### **43-5.2 Site Plan Hearings**

The Commission, at its discretion, may hold a public hearing on an application for Site Plan review, other than an application for a Site Plan review covered by 43-5.1, above.

##### **43-5.3 Hearing Dates**

Any such public hearing shall be held within 65 days after the date of receipt of a complete application and shall be completed within 35 days after such public hearing commences.

#### **43-6 Commission Review**

##### **43-6.1 Conditions and Safeguards**

In reviewing a Special Permit and/or Site Plan application, the Commission shall take into consideration the public health, safety and general welfare, and may prescribe such conditions and safeguards as are necessary to assure compliance with §44, herein.

##### **43-6.2 Submission of Additional Information**

The Commission may require the submission of additional information deemed necessary to determine compliance with the intent and purpose of these regulations.

##### **43-6.3 Conservation Commission Regulated Activities**

If a Special Permit or Site Plan application involves an activity regulated by the Conservation Commission or Conservation Director, the Planning and Zoning Commission shall not render its decision on such application until the Conservation Commission or Conservation Director has submitted a report with its final decision.

##### **43-6.4 Hiring of Outside Consultants**

The Planning and Zoning Director, his/her designee, or the Planning and Zoning Commission may require an applicant to pay for hiring one or more outside consultants to assist the Planning and Zoning staff and Commission in analyzing, reviewing, and reporting on areas requiring technical review.

- 1) Upon the filing of an application, the Planning and Zoning Director, or his/her designee, shall make a determination whether one or more consultant(s) are needed to analyze, review and report on areas requiring technical review in order to assist the Commission. Such consultant(s) may include, but shall not be limited to engineers, surveyors, soil scientists, traffic consultants and information technologists.

If such determination is made, the Director shall assess the reasonable costs for such consultant(s) to the applicant based upon a preliminary estimate from the consultant(s). The Director shall collect 150% of the estimate from the applicant, which amount shall be held in escrow until the technical review(s) are completed. Any excess amount collected over the actual cost shall be refunded to the applicant. This payment shall be considered as an integral component of the application. The failure by the applicant to make this payment shall render the application incomplete.

- 2) The Planning and Zoning Commission may also make a determination whether one or more outside consultant(s) are needed in the event that the Director does not make such a determination, or in the event that the Planning and Zoning Commission determines that one or more additional outside consultant(s) are needed. Prior to making such a determination, the Planning and Zoning Commission shall determine:

- (a) That the evidence in the record of the proceedings has been produced or is likely to be produced which requires the hiring of such consultant(s);

- (b) That the department staff will be unable to perform the technical review; and

- (c) That adequate time exists for the applicant to review and respond to such consultant(s)' report(s).

The Planning and Zoning Commission shall then make such a reasonable assessment and collect 150% of the estimate from the applicant. Any excess amount collected over the actual costs shall be refunded to the applicant. This payment shall be considered as an integral component of the application. The failure by the applicant to make this payment shall render the application subject to denial as incomplete.

## **43-7 Commission Action**

### **43-7.1 Special Permit and/or Site Plan Requiring Public Hearing**

Subject to §43-7.3, within 65 days after completion of the public hearing the Commission shall grant or deny such application.

### **43-7.2 Site Plan Not Requiring Public Hearing**

Subject to §43-7.3, within sixty five (65) days after the date of receipt of an application for a site plan for which the Commission does not require a public hearing, the Commission shall approve, modify and approve, or deny the Site Plan.

### **43-7.3 Special Permit or Site Plan Involving Conservation Commission**

If in the case of applications involving an activity regulated by the Conservation Commission, the time for decision by the Planning and Zoning Commission pursuant to §43-7.1 or §43-7.2 would elapse prior to the thirty-fifth (35th) day after a decision by the Conservation Commission or Conservation Director, the time period for a decision shall be extended to thirty five (35) days after the Conservation decision.

**43-7.4 Simultaneous applications for Special Permit and Site Plan Review**

If, pursuant to § 43-5.1, and applicant submits two such applications at the same time, the two applications shall be deemed to be a single proposal for purposes of voting and the Commission shall with one vote approve, approve with conditions, modify and approve or deny such proposal, simultaneously.

**43-7.5 Modifications or Denial**

A site plan may be modified or denied only if it fails to comply with the requirements already set forth in the Zoning or Inland Wetland Regulations in accordance with § 8-3(c) of the Connecticut General Statutes.

**43-7.6 Conditions of Approval**

When the Commission grants a Special Permit or approves a Site Plan with conditions, each and all of said conditions shall be an integral part of the commission's decision. Should any of the conditions on appeal from such decision be found to be void or of no legal effect, then the conditional approval is likewise void. The applicant may refile another application for review.

**43-7.7 Reasons & Permits**

The Commission shall state upon its records the reason for its decision. Upon granting of a Special Permit or approval of a Site Plan, the applicant shall apply for a zoning Permit from the Zoning Enforcement Officer.

**43-8 Extension of Time**

The applicant for a Special Permit or Site Plan application may consent in writing for an extension of the time periods in accordance with § 8-7d of the Connecticut General Statutes.

**43-9 Notice of Decision**

Notice of the decision of the Commission on a Special Permit application or Site Plan shall be published in a newspaper having a substantial circulation in the Town of Westport and a copy of the decision on a Special Permit or Site Plan application shall be sent by certified mail to the applicant within fifteen (15) days after the decision.

**43-10 Effective Date**

Special Permits shall become effective upon the filing of a copy thereof in the Office of the Town Clerk and the recording of a copy thereof in the land records of the Town.

**43-11 Time Period and Expiration**

In granting a Special Permit, the Commission may set or impose time periods or limits on the use or require periodic renewal of the permit, without a public hearing. In the event an appeal is taken from the Commission's granting of a Special Permit, any such time period shall commence on the date of final resolution or disposition of such litigation. Expired Special Permits shall be considered null and void.

**43-11.1 Year to obtain permit**

Failure to obtain a Zoning Permit within one year of the date of granting a Special Permit or within one year of the date of approval of a Site Plan or within one year of the date of final

resolution or disposition of any resulting appeal, shall render such Special Permit and/or Site Plan null and void.

#### **43-11.2 Extension request**

In order to obtain the required Zoning Permit, the Commission may grant the extension of a Special Permit or Site Plan approval for a period not to exceed one (1) additional year, only; provided there are unusual or extenuating circumstances that warrant such extension.

#### **43-11.3 Time to complete project**

Except as provided in sub-section (j) of §8-3 of the Connecticut General Statutes (CGS) for very large multi-family and non-residential projects, all work in connection with any site plan shall be completed within the following times from the date of approval of such plan:

- Plans approved before October 1, 1989 - 7 years
- Plans approved on or after October 1, 1989 - 5 years

The Commission may grant one or more extensions of the time to complete all or part of the work in connection with such site plan, provided that the total time for completion shall not exceed ten years from the date such site plan was approved.

The Commission may condition the approval of an extension on a determination of the adequacy of the amount of the bond or other surety furnished under §43-12, Bond. The Resolution of approval of a site plan shall state the date on which such approval expires.

Failure to complete all work within the period of approval (including extension[s], if any,) shall result in an automatic expiration of the approval of such site plan.

### **43-12 Bond**

The Commission may require, as a condition of approval, that the applicant post a bond with surety satisfactory to the Commission in order to assure conformance with all physical improvements (excluding buildings) shown on the approved site plan. An itemized estimate of the cost of the specific improvements shall be prepared by the applicant, including a separate inflation factor for the estimated construction period and shall be submitted to the Town Engineer and the Planning Director for approval. The bond may be in the form of cash, a certified check payable to the Town of Westport, a savings passbook with a signed withdrawal slip for a joint account in the name of the Town and the applicant, an irrevocable letter of credit from a bank, or an insurance company performance bond written by a company authorized to write bonds in the State of Connecticut. Said bond shall be posted with the Town, in accordance with the approved Site Plan. The bond cannot expire in less than five (5) years. All site work shall be completed within the period of approval of the site plan, pursuant to §43-11.3.

### **43-13 Release of Bond**

Upon written request of the applicant for the reduction or release of the bond, the Commission shall cause the site to be inspected by the Zoning Enforcement Officer, the Town Engineer, and/or other appropriate Town Officials to determine if all of the conditions of approval have been met and if all required site improvements have been satisfactorily completed in accordance with the approved plans. Before release of any bond, the Commission may require the applicant to submit an "As-Built" plan, certifying that all of the required site improvements have been installed in accordance with the approved plans. Based on the findings, the Commission may authorize the reduction or release of said bond and the subsequent issuance of a Zoning Certificate of Compliance.

#### **43-14 Administrative Approval**

In special cases, as defined below, an administrative site plan application for minor projects may, at the applicant's option, be submitted to the Planning and Zoning Office for review by either the Administrative Review Committee (ARC) or the Planning and Zoning Commission. The Administrative Review Committee shall be composed of the Planning Director, (or his/her designated agent who is a member of the Planning and Zoning staff), the Zoning Enforcement Officer (or his/her designated agent who is a member of the Planning and Zoning staff) and Chairman of the Planning and Zoning Commission (or his/her designated agent who is a member of the Planning and Zoning Commission). The ARC shall act on behalf of and have the authority of the Planning and Zoning Commission as defined in §43, except that the required reports and documents set forth in §44-2 and the waivers granted pursuant to §44-4 must be submitted seven (7) days prior to the hearing or Commission action.

##### **43-14.1 Procedures**

The Administrative Review Committee shall review applications in accordance with the standards and procedures set forth in § 43 and shall either approve, modify and approve, or disapprove said application with conditions or reasons as appropriate, all within the statutory time period of sixty five (65) days.

- 43-14.1.1 Said application shall only be approved with the full written concurrence of all three committee members.
- 43-14.1.2 The review Committee may defer action and forward any eligible application to the full commission for their review and action within the statutory time period.
- 43-14.1.3 Any applicant, upon receipt of a Review Committee denial, may submit a new application to the Planning and Zoning Commission for full Commission review.

##### **43-14.2 Eligible Applications**

Administrative Site Plans may be submitted to the Administrative Review Committee for the following types of projects only:

###### **1) Site Plan Modifications**

Where only site work is involved such as parking lot alterations or expansions, landscape modifications (refuse area, screening, retaining walls, fences) and utility modifications; provided that said minor modifications complies with §34 and 35, herein.

###### **2) Small Building Additions**

Small building additions with fewer than five hundred (500) square feet of building coverage and containing fewer than five hundred (500) square feet of gross interior floor space. Exterior staircases mandated by the Fire Marshal and handicap ramps and elevators mandated by the Building Official for public safety; and awnings. Site Plan approval is not required for ground mounted or roof top mechanical units.

###### **3) Small Changes of Use**

A small change of use within an existing building including an increase of not more than three (3) required parking spaces on the lot.

Coastal site plan review pursuant to §31-10.7 shall be required for small changes of use on waterfront property.

- 4) Apartments that predate 1959 per §11-2.4.13.
- 5) Exterior facade changes to commercial buildings.
- 6) Outdoor Storage & Display per §32-6.
- 7) Outdoor Eating Areas that do not comply with the requirements of §32-20(5).
- 8) Administrative Excavation/fill Permits - In accordance with §32-8.6, herein.
- 9) Outdoor Special Events as required by §32-23.
- 10) Mobile Vendors on private property pursuant to §11-2.4.1, herein.